

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO 24/98

In the matter between

REX

Vs

NKOSINGIPHILE MPIYOYO GUMEDZE

Coram S.B. MAPHALALA - A J

For the Crown MR. J. MASEKO

For the Defence MR. J. HOWE

JUDGEMENT

(25/05/98)

You are charged with the crime of murder. In that upon or about 7th October 1997, at or near Maplotini, Lavumisa in the Shiselweni region, you did unlawfully and intentionally kill Makoko Makhosonkhe Matsenjwa by stabbing him with a knife. When the indictment was read you pleaded not guilty to murder but guilty to a lesser offence that of culpable homicide. Your attorney Mr. Howe confirmed the plea of culpable homicide.

The crown then submitted that the identity of the deceased is not in dispute, and further that the cause of death is not a challenge and thus the postmortem report was entered in exhibit "A". The crown then read a Statement of Agreed Facts between the crown and the defence. The statement of the sequence of events leading to the death of the deceased. In the circumstances the court also find you guilty in respect of culpable homicide.

I have considered all your personal circumstances in arriving at a proper sentencing in this case. That you were abandoned by your own natural mother and you were under the care of your grandmother and also that one of your siblings has passed away. That you make traditional sandals for a living. That is why on that fateful day you had in your possession this knife which you used in making traditional sandals.

I am also told that you are not an educated person and that you left school in Standard Two and that you would like to go back to school and further your education. However, there is no one to pay for you in this pursuit that you want to (undertake). I am also told by Mr. Howe that you have been in custody since the 17th October 1997,

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which shows that you have been in custody for seven months now. I am also told that you are a young man of 17 years old, and that the circumstances of the case are such that you acted at the spare of a moment in stabbing the deceased. I must say that this is a very unfortunate case. The killing of another human being is always a serious matter. You are going to have a stigma for life for having taken the life of another human being. Members of the community where you stay will always point fingers behind your back and call you a killer, and this in itself would be punishment for the rest of your life. I have taken into consideration that you are still young, you are 17 years old, and that you are an enterprising young man as Mr. Howe as pointed out, and that you have been in custody for seven months. In my view I think that

seven months has taught you a lesson.

I am going to give a sentence that I am going to wholly suspend in the circumstances. The sentence is (5) five years imprisonment. The whole sentence is suspended for a period (3) three years on condition that you are not convicted of an offence which violence is an element committed during the period of suspension.

S.B. MAPHALALA

ACTING JUDGE